

LAKE COUNTY BOARD of ADJUSTMENT
March 11, 2020
Lake County Courthouse Commissioners Office (Rm 211)
Meeting Minutes

MEMBERS PRESENT: Don Patterson (via phone), Steve Rosso, Mike McKee

STAFF PRESENT: Jacob Feistner, Rob Edington, Clint Evenson, Lita Fonda

Don Patterson, chair, participated via phone due to unforeseen circumstances. Vice-chair Mary Jensen was unavailable. Senior member Steve Rosso acted as chair for the meeting in order to be able to see the audience and so forth. He called the meeting to order at 3:31 pm.

STRAUB CONDITIONAL USES—FINLEY POINT (3:31 pm)

Clint Evenson presented the staff report. (See attachments to minutes in the March 2020 meeting file for staff report.)

Mike asked questions pertaining to the cul de sac/turnaround whose presence was undetermined. Clint said [the road] ended, and there was some widening of the area. He couldn't determine if that was actually a cul de sac. Mike asked about an area at the north end of the road, which he showed on a map. Clint described that most of the lots were developed. Mike asked if it was required for the Finley Point Fire Dept. to make a determination regarding safety, if they'd already done that with the improvements constructed to the north of this property. Clint replied he wasn't sure. The subdivision approval didn't mention it. They wanted to make sure it had been at least reviewed. Mike's concern was if other people didn't have to meet that requirement, it might place an adverse burden on the Straub property. He didn't have a problem with the fire dept. looking at it and making sure they would be able to get in there in the event of an emergency.

Kevin Straub volunteered that he contacted the Finley Point fire chief, who looked at it and wrote a letter. (See attachments to minutes in the March 2020 meeting file for a copy.) Homes were on both sides but not the immediate properties. Four lots were empty, including his lot, 2 to the south and one to the north, and another way down. There were roughly 5 other homes. Clint mentioned the letter from the fire chief seemed to be in favor of the development. Steve read the letter to the board members. Clint said the main concern was if something went down [the road], would it be able to get out since it was a dead-end street.

Clint clarified for Steve that the landscaping done from the Sept. zoning conformance permit [for this property] covered the removal of diseased and damaged vegetation and clearing defensible space as well as site prep work. This work wasn't done in the lakeshore protection area. A lakeshore construction application had just been turned in for some of that.

Kevin Straub spoke about his application. He shared an email from the subdivision architectural review committee that favored the plan. (See attachments to minutes in the March 2020 meeting file for a copy.) Agent Earl Hanneman had no additional comments. Steve paraphrased the architectural review committee's letter for Don.

Mike thought the stormwater plan was a good solution to potential problems. He had no further concerns on the project.

In response to Steve's question about the condition of landscaping along the water and what the plans were for that area, Kevin said they were leaving trees and shrubbery that were there. They were putting in a dock currently. Otherwise it was not necessarily lawn but native grasses. It was pretty open. Some brush existed on both sides. They planned to put an 8- or 10-foot by 12-foot building outside of the 20-foot lakeshore protection zone for lake-related storage.

Public comment opened: None offered. *Public comment closed.*

- Steve, pg. 7, item 2, 4th line of 2nd italicized paragraph: After 'implemented', add '; a vegetated buffer is maintained between the residence and the lakeshore;'.

Mike questioned adding this in more than one place. Steve pointed out a lot of things repeated in the reasoning. It was only in one place in the conditions. The findings of fact were the basis of the decision.

Motion made by Mike McKee, and seconded by Steve Rosso, to approve the conditional uses as presented and modified, with the understanding that the Finley Point Fire Dept. has deemed their approval of the project. Motion carried, all in favor.

KLOMBIES CONDITIONAL USES—MASUMOLA (3:56 pm)

Rob Edington presented the staff report. (See attachments to minutes in the March 2020 meeting file for staff report.) He mentioned staff observed that when the subdivision was originally created, it was prior to standard subdivision review. It appeared they'd done a huge cut on the top lots and moved the fill down. There was no way to confirm this but it may have been how the steep slopes were originally created.

Rob clarified for Don that the adjacent owner with verbal comments mentioned in the report didn't say if she was for or against the project. Although invited, she hadn't submitted written comment. Members of the public were in attendance and it was possible that she might be here to comment.

- Steve and Rob, pg. 7, condition #4, 4th line: Correct '5 and 11' to '5 and 12'.

Owner Mary Roubidoux was concerned that the neighbors were under the impression that she had requested the 2-year period whereas the definition of the conditional use permit was for a 2-year period. Some miscommunication arose because of that. Agent Earl Hanneman had no immediate comment.

Public comment opened:

David Hummel lived next door and had no problem with what the plans called for or with the trailer. He was in favor. Let them build.

Frank Lyons and his wife owned the lot in front of this one and also kitty corner. The trailer showed up last fall. It was not allowed according to the covenants. In the name of being welcoming and hospitable, they allowed it to continue without notification of violation. They intended to continue [on that path] but they didn't want to give up the right to proceed, if the temporary residence stayed much longer than a year. The neighbors understood that the owner's hope was to complete the house by next fall and to remove the temporary residence at that point, although this wasn't required by the conditional use permit. Steve noted the Board of Adjustment (BOA) had the right to enforce zoning district regulations but not covenants. Mary pointed to several homes in the development that were in violation [of the covenants]. She listed examples. Frank understood. He was saying they weren't objecting.

David Hummel said the covenants hadn't been enforced in 5 to 7 years. At their last meeting, he thought they'd either voted to dispose of them or not enforce them. There were things there that would violate the covenants, and they'd been violating them since he moved there 17 years ago. No one seemed to care. These were little violations that weren't unsightly and weren't gross. Steve reiterated that was up to the homeowners association. Frank repeated they were happy for it to proceed as proposed.

Agent Earl Hanneman suspected they wanted to build the house as quickly as possible and move out of the trailer. If unforeseen issues came up, it might be more than a year. The property had bedrock. Mary added they'd contacted an architect in December to draw up the house plans. This had been in the works. She didn't want to live in the trailer—she came from a 3300 square foot house. Steve stated the application under evaluation allowed 2 years.

Public comment closed.

Motion made by Mike McKee, and seconded by Steve Rosso, to approve the conditional uses with modified recommendations and conditions. Motion carried, all in favor.

BOA BYLAWS AMENDMENT (4:20 pm)

Jacob Feistner outlined the proposed amendment on pg. 1, section 2 of the BOA bylaws. (See attachments to minutes in the March 2020 meeting file for staff memo.) He had added 2.a.iv. at Wally Congdon's suggestion after Wally looked this over.

Steve suggested specifying a minimum number of board meetings that an alternate would need to attend in a one-year period rather than saying 'occasionally'. Lita pointed out the number of meetings in a year could vary.

Mike had been involved with a number of entities and thought to have quasi-volunteers was an unusual request. He assumed they'd be sworn in. He thought modifying item #6 on pg. 4 would be better, so a vote of 3 members wouldn't be necessary. Steve and Jacob explained this was from state law. Jacob clarified an item was deemed denied if it didn't receive 3 votes and read from the Montana Annotated Code (MCA).

Steve thought if they were only dealing with emergency absences like Don's, they could have 5 people most of the time. People were allowed to be members whom they knew would be gone on vacation or seasonally, possibly because it was difficult to fill vacancies. Jacob said that they'd been getting applications for this one board. Staff tried to work with the board members because they felt they had a very good BOA. They tried to be flexible but it had become an issue. Sometimes 2 to 3 were out of state and staff were trying to figure out how to have a meeting. They also had an aging board with circumstances that arose out of their control. Staff wanted to provide some flexibility for that.

Lita outlined that prior to the recent few years, they didn't do telephone participation. The phone conferencing gave more leeway but then again, it was hard to hear, and visuals couldn't be seen. She thought that was important to consider. Jacob said it wasn't ideal. As far as the state law requiring 3 votes, Lita said that for the kind of decisions this board made, she was really glad as a homeowner to hear that they did have to have three votes. It was a big decision and it impacted other people's properties. She saw a value in that even though it was hard sometimes.

Jacob agreed. He thought the Planning Board was a good board and an important one but it gave a recommendation. Here, the Board of Adjustment made decisions. He thought three to make that decision was important, to keep objectivity, to keep bias out and to make it a better decision.

Steve asked if Wally had been consulted on the phone participation since it wasn't actually in the bylaws to consider a member as here when they were on the phone. Jacob answered that Wally had given the legal approval for it. It wasn't in the bylaws. Steve asked if they needed to add something to item 3, pg. 1-2, about that. Mike said [the phone conferencing] was fairly common. It wasn't ideal but it was practical.

Mike asked if people were willing to participate on this [alternate] basis. Jacob replied they hadn't talked about it with people because it hadn't been a possibility yet. Applicants to the board [who weren't selected] were kept on file for 6 months in case they were needed. If this were to be adopted, staff could let them know of the possibility to be a substitute.

Jacob affirmed for Steve that this would ensure that 3 members were here in person and would reduce the amount of phone calling if approved. For statewide boards, Steve agreed it was a plus to be able to call in, with participants from all over the state but for a local county board, being here was different than listening on the phone.

Don pointed to 2.a.iii. Based on that, you could have 3 or 4 [alternates at one meeting]. He questioned whether that was a good idea. Steve asked Don how well he could hear applicant Mary Roubidoux commenting on the last application. Don said he couldn't hear her well. He heard some of the other commenters in and out as well. The people needed to come towards the speaker or phone so he could hear the whole thing. Steve agreed that was an option. It [also] suggested having a solution other than calling in would be beneficial.

Lita said ideally they really did want to have 5 people here. They really liked to have more than the 3 minimum. Sometimes things came up or happened that weren't avoidable. She liked the concept of having some sort of backup. She'd seen dedicated board members who planned to be there every month, where the one time some plan came up for them, someone had an emergency and they had to change their plans and come in. Because she'd seen that, this appealed to her. She also liked what Jacob mentioned where this would be a way for people to get some experience and some exposure. It would be almost like a training ground for people, perhaps like mentoring. It was a new idea and would benefit from this fine tuning from the board members.

Jacob compared it to the Planning Board. A new planning board member was there learning from the other 8 or 9. It was usually 2 or 3 months down the road where the new member started speaking up and having a part. Those first few months were a learning curve, just like there would be here. That substitute might be a full time member next year if somebody had to step out. They would have already had a year to get prepared and there was an opportunity to see if they'd be a good board member. It benefitted both sides in that way.

Mike commented this had additional costs. You didn't know from month to month if someone would have an emergency so you'd have to send out full packets to everybody. There would be additional mileage.

Don compared the requirement for the alternate members to come and get training versus where currently, the first time in was the first time at the meeting. Steve wondered if they could eliminate the chance that they might have all alternate members at a meeting.

- Steve and Jacob, pg. 1, item #2.a.i, 1st line: Replace 'five members' with 'five full-time members and no more than two alternate members'.

Jacob highlighted that the meeting agenda, report and attachments were now put on the county website. Alternate members could read them off the internet, and receive a hard copy if they were needed. Steve mentioned that the minutes weren't on there. Lita said she could easily email those. Steve thought it would be reasonable and nice to mail them a packet if there were only 2 alternates. Jacob said they could make the option available. Some people loved to read off their tablets.

Lita said it might make approving minutes interesting but that was surmountable. Jacob pointed to item 5.c on pg. 3. A simple majority of members who had been present at that previous meeting might approve, modify or deny the minutes. He interpreted that as of the members who were at the meeting reflected by the minutes, the majority of whichever of those members were at the meeting where the minutes were being approved could approve them. This was the chance to fix that if they wanted.

Mike suggested putting the thoughts and modifications that had been discussed today in an email and having more time to look at them before the next meeting. He and Steve thought they could get Frank and Mary's input that way as well. Jacob checked for more changes.

- Steve, Don & Mike: Pg. 1, 2.a.iv: Change ‘occasionally attend the board meetings’ to ‘attend a minimum of three board meetings in a 1-year period’.

Mike asked if alternates needed to attend 3 board meetings prior to participating. Steve observed that new full-time members made decisions at their first meeting. Jacob checked on the wording. Would this be in one year or in a 12-month period? For mid-year appointees, a calendar year wouldn’t work. He suggested leaving it as ‘in a 1-year period’.

Steve suggested asking Wally if allowance for telephone attendance needed to be added as 3.e (pg. 2) for full-time members, to cover this in the event of questions. Mike thought that was a good idea. Jacob said they might state that phone call-ins were okay if alternate members were not available. Steve asked if 3.e should say that if full-time members couldn’t attend, an alternate would be scheduled first. If an alternate couldn’t be scheduled, full time member(s) would be allowed to call in. Mike suggested saying in the event that 5 members of any type couldn’t be present, a telephone call in would be permitted.

Don preferred to have an experienced person call in rather than having an alternate attend. Jacob, Steve and Mike thought it was pretty important to have people here in person, and preferred that over the telephone. Mike remarked a lot was to be said for the body language and so forth. Lita added it was common for people to bring pictures to pass around for the board. Jacob felt they were saying the decision was that important. It wasn’t that the board member wasn’t important. They wanted people here in person if they could. He compared it to a substitute teacher—the regular teacher would always be preferred.

Steve thought it meant they would need to stress the expectation to new members that full-time members would be expected at the meetings. The alternate member was to be only used when they absolutely had to.

Jacob mentioned if they tried this for a year and it didn’t work out, the regular full-time members were the ones to vote to change the by-laws, not the alternate members. If the 5 regular members were there the night the bylaws were adopted, they make the decision. Mike thought there would be issues. Items like the bylaws might need to be deferred [if the regular members weren’t available]. Jacob agreed they could wait on those.

Steve summarized the bylaws draft would be marked up and emailed to the 5 current members for input. Mike suggested a deadline for returning comments. Staff noted that would be around March 30. Jacob described for Mike that the commissioners were in support of this although the statute said the Board of Adjustment shall adopt rules in accordance with the provisions. He and Wally spoke to them to make sure they were behind the idea before it was brought up here, and Bill Barron had heard most of tonight’s discussion.

MINUTES (5:04 pm)

Sept. 12, 2018

Steve gave changes:

Pg. 3, next to last paragraph, line 8: replace ‘parcel’ with ‘structure’.

Pg. 7, 2nd line: Change ‘have in the’ to ‘have if the’.

Pg. 9, 1st paragraph, 4th line from bottom: change 'approve the road' to 'improve the road'.
Motion made by Steve Rosso, and seconded by Don Patterson, to approve the Sept. 12, 2018 meeting minutes as amended. Motion carried, 2 in favor (Don Patterson, Steve Rosso) and 1 abstention (Mike McKee).

Dec. 11, 2019

Changes were given:

Steve, pg. 2, 1st paragraph of Sandholm item, 2nd line: Delete 'the' in front of 'Dorel'.

Steve and Mike, pg. 2, last paragraph, last line: Change 'set' to 'detailed'.

Steve, pg. 3, 1st paragraph, 4th line: Change 'in the MT' to 'in MT'.

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the Dec. 11, 2019 meeting minutes as amended. Motion carried, all in favor.

Jan. 8, 2020

Motion made by Steve Rosso, and seconded by Mike McKee, to approve the Jan. 8, 2020 meeting minutes as written. Motion carried, all in favor.

OTHER BUSINESS (5:10 pm)

None.

Steve Rosso, acting chair, adjourned the meeting at 5:10 pm.